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8 UNITED STATES DISTRICT COURT  
9 SOUTHERN DISTRICT OF CALIFORNIA  
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11 OTAY RIVER CONSTRUCTORS, a joint )  
12 venture of THE WASHINGTON GROUP )  
13 INTERNATIONAL, INC. and FLUOR )  
14 ENTERPRISES, INC., )

15 Plaintiff, )

16 v. )

17 ZURICH AMERICAN INSURANCE )  
18 COMPANY, an Illinois Corporation; and )  
19 DOES 1 through 10, inclusive, )

20 Defendants. )  
21 \_\_\_\_\_ )

Case No. 06cv2631 BTM (WMc)

**SECOND AMENDED SCHEDULING  
ORDER**

22 On June 23, 2008, the Court held a telephonic Discovery Conference. Appearing for  
23 Plaintiff was Scott Sonne. Esq. Appearing for Defendant-in-Intervention was Gary Osborne,  
24 Esq. After consulting with the attorneys of record for the parties and being advised of the status  
25 of the case, and good cause appearing,

26 1. The parties shall disclose the identity of their respective experts in writing by  
27 **September 29, 2008**. The date for the disclosure of the identity of rebuttal experts shall be **on or**  
28 **before October 13, 2008**. The written designations shall include the name, address and  
telephone number of the expert and a reasonable summary of the testimony the expert is  
expected to provide. The list shall also include the normal rates the expert charges for deposition  
and trial testimony. **The parties must identify any person who may be used at trial to**

1 present evidence pursuant to Fed. R. Evid. 702, 703 and 705, respectively. This  
 2 requirement is not limited to retained experts.

3 2. On or before *November 17, 2008*, each party shall comply with the disclosure  
 4 provisions in Rule 26(a)(2)(B) of the Federal Rules of Civil Procedure. This disclosure  
 5 requirement applies to all persons retained or specifically employed to provide expert  
 6 testimony or whose duties as an employee of the part regularly involve the giving of expert  
 7 testimony.

8 3. Any party shall supplement its disclosure regarding contradictory or rebuttal  
 9 evidence under Rule 26(a)(2)(c) on or before *December 15, 2008*.

10 4. Please be advised that failure to comply with this section or any other  
 11 discovery order of the court may result in the sanctions provided for in Fed.R.Civ.P.37  
 12 including a prohibition on the introduction of experts or other designated matters in  
 13 evidence.

14 5. All discovery, including experts, shall be completed by all parties on or before  
 15 *January 19, 2009*. "Completed" means that all discovery under Rules 30-36 of the Federal Rules  
 16 of Civil Procedure, and discovery subpoenas under Rule 45, must be initiated a sufficient period  
 17 of time in advance of the cut-off date, *so that it may be completed* by the cut-off date, taking into  
 18 account the times for service, notice and response as set forth in the Federal Rules of Civil  
 19 Procedure. Counsel shall promptly and in good faith meet and confer with regard to all discovery  
 20 disputes in compliance with Local Rule 26.1(a). All discovery motions shall be filed within 30  
 21 days after counsel have met and conferred and reached an impasse with regard to any particular  
 22 discovery issue, but in no event shall discovery motions be filed more than 30 days after the  
 23 close of discovery.

24 6. A Mandatory Settlement Conference shall be conducted on *February 17, 2009* at  
 25 *2:00 p.m.* in the chambers of Magistrate Judge William McCurine, Jr. Counsel shall submit  
 26 confidential settlement briefs **directly** to chambers no later than *February 10, 2009*. The briefs  
 27 shall set forth the party's statement of the case and the party's settlement position, including the  
 28 last offer or demand made by that party and a separate statement of the offer or demand the party

1 is prepared to make at the Settlement Conference. Settlement Conference briefs shall not exceed  
 2 ten (10) pages in length, and shall *not* include exhibits or attachments. All parties and claims  
 3 adjusters for insured defendants and representatives with complete authority to enter into a  
 4 binding settlement, as well as the principal attorney (s) responsible for the litigation, must be  
 5 present and legally and factually prepared to discuss and resolve the case at the Mandatory  
 6 Settlement Conference. **Any special arrangements desired in cases where settlement  
 7 authority rests with a governing body shall be proposed in advance.**

8 7. All other pretrial motions must be filed **on or before *March 3, 2009***. (*In*  
 9 *intellectual property cases, this would include claims construction hearings*. Motions will not be  
 10 heard or calendared unless counsel for the moving party has obtained a motion hearing date from  
 11 the law clerk of the judge who will hear the motion. **Be further advised that the period of  
 12 time between the date you request a motion date and the hearing date may be up to three  
 13 or more months. Please plan accordingly.** For example, you may have to contact the judge's  
 14 law clerk three or more months in advance of the motion cutoff to calendar the motion. Failure  
 15 to make a timely request a motion date may result in the motion not being heard. Motions will  
 16 not be heard on the above date unless you have obtained that date from the judge's law clerk.

17 8. The requirements of Civil Local Rule 16.1 (f)(2) to file Memoranda of  
 18 Contentions of Fact and Law are waived.

19 9. Counsel shall comply with the Pre-trial disclosure requirements of Federal Rule  
 20 of Civil Procedure 26(a)(3) **on or before *May 4, 2009***.

21 10. Counsel shall meet and confer on the preparation of the Pre-trial Order required  
 22 by Judge Moskowitz **on or before *May 15, 2009***.

23 The parties shall prepare a proposed Pre-trial Order containing the following:

24 (a) A statement to be read to the jury, not in excess of one page, of the nature  
 25 of the case and the claims and defenses.

26 (b) A list of the causes of action to be tried, referenced to the Complaint and  
 27 Counterclaim. For each cause of action, the order shall succinctly list the elements of the claim,  
 28 damages and any defenses. A cause of action in the Complaint or Counterclaim which is not

1 listed shall be dismissed with prejudice.

2 (c) 1. A list of each witness that counsel actually expects to call at trial  
3 with a brief statement, not exceeding four sentences, of the substance of the witnesses'  
4 testimony.

5 2. A list of each expert witness that counsel actually expects to call at  
6 trial with a brief statement, not exceeding four sentences, of the substance of the expert  
7 witnesses' testimony.

8 3. A list of additional witnesses including experts that counsel do not  
9 expect to call at this time but reserve the right to call at trial along with a brief statement, not  
10 exceeding four sentences, of the substance of the witnesses' testimony.

11 (d) 1. A list of all exhibits that counsel actually expect to offer at trial  
12 with a one-sentence description of the exhibit.

13 2. A list of all other exhibits that counsel do not expect to offer at this  
14 time but reserve the right to offer if necessary at trial with a one-sentence description of the  
15 exhibit.

16 (e) A statement of all facts to which the parties stipulate. This statement shall  
17 be on a separate page and will be read to and provided to the jury. The parties are encouraged to  
18 meet with the assigned magistrate judge to work out as many stipulations of fact as possible.

19 (f) A list of all deposition transcripts by page and line, or video tape  
20 depositions by section, that will be offered at trial. The proponent of the deposition shall prepare  
21 a copy of all portions to be read or played to the jury.

22 (g) The parties shall prepare proposed jury instructions (if trial by jury) on the  
23 substantive claims, damages and defenses. One set of proposed instructions shall be given to the  
24 court. If the parties disagree on an instruction, the alternative instructions shall be submitted.

25 (h) The parties shall prepare a proposed jury verdict form.

26 The parties are encouraged to consult with the assigned magistrate judge to work out any  
27 problems in preparation of the proposed pretrial order. The Court will entertain any questions  
28 concerning the conduct of the trial at the pretrial conference.

1 11. Objections to Pre-trial disclosures shall be filed no later than *May 20, 2009*.

2 12. The Proposed Final Pretrial Conference Order as described above shall be  
3 prepared, served, and lodged on or before *May 26, 2009*.

4 13. The final Pretrial Conference is scheduled on the calendar of *Judge Moskowitz* on  
5 *June 2, 2009* at *4:00 p.m.*

6 14. A post trial settlement conference before a magistrate judge may be held within  
7 30 days of verdict in the case.

8 15. The dates and times set forth herein will not be modified except for good cause  
9 shown.

10 16. Dates and times for hearings on motions should be approved by the Court's clerk  
11 before notice of hearing is served.

12 17. Briefs or memoranda in support of or in opposition to any pending motion shall  
13 not exceed twenty-five (25) pages in length without leave of a district court judge. No reply  
14 memorandum shall exceed ten (10) pages without leave of a district court judge. Briefs and  
15 memoranda exceeding ten (10) pages in length shall have a table of contents and a table of  
16 authorities cited.

17 **IT IS SO ORDERED.**

18 Dated: June 24, 2008

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Hon. William McCurine, Jr.  
U.S. Magistrate Judge, U.S. District Court

21 COPY TO:

22 HONORABLE BARRY T. MOSKOWITZ, U.S. DISTRICT JUDGE

23 ALL PARTIES AND COUNSEL OF RECORD  
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